



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCT 26 2012

DJ Culkar, Esq.  
Comerica Bank Tower  
Corporate Legal Department  
1717 Main Street, MC 6506  
Dallas, TX 75201

RE: MUR 6523

Dear Mr. Culkar:

On January 26, 2012, the Federal Election Commission (the "Commission") notified Comerica Bank of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 16, 2012, the Commission found, on the basis of the information in the complaint, information provided you, and other available information, that there is no reason to believe that Comerica Bank violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter 10" followed by a stylized flourish.

Peter G. Blumberg  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Comerica Bank** **MUR: 6523**

**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") by David E. Smith. *See* 2 U.S.C. § 437g(a)(1). The Complaint in this matter raises questions about certain loans that Wilford R. Cardon made to his authorized committee, Wil Cardon for U.S. Senate (the "Committee"), in connection with Cardon's 2012 campaign for U.S. Senate. The Complaint alleges that Cardon's loans to the Committee totaling \$815,709.60 were improper because those funds were not his "personal funds" but belonged to several companies he controlled. The Complaint further contends that the timing of the loans suggests that some portion was funded from proceeds of a bank loan Cardon's companies had obtained without sufficient collateral. In either case, according to the Complaint, the loans constitute illegal contributions from a national bank in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

Available information demonstrates that Cardon's loans to his campaign complied with the Act and Commission regulations. Accordingly, the Commission finds no reason to believe that Comerica Bank violated 2 U.S.C. § 441b(a).

**II. FACTUAL BACKGROUND**

Wilford R. Cardon was a candidate for the 2012 Republican primary election for U.S. Senate in Arizona. *See* Wilford R. Cardon, Statement of Candidacy (Aug. 12, 2011). He is President and CEO of The Cardon Group, a family-owned real estate development company that

operates a number of related businesses. See THE CARDON GROUP, <http://cardon.com/> (last visited June 25, 2012). These businesses include Rio Claro, Inc. ("Rio Claro"),<sup>1</sup> The Cardon Family, LLC, and Boa Sorte, LLC ("Boa Sorte"). Cardon is Chairman, President, Secretary and Director of Rio Claro, and Manager of The Cardon Family, LLC, and Boa Sorte. See STARPAS Business Entity Search, ARIZ. CORP. COMM., <http://www.azcc.gov/> (last visited June 25, 2012).

The Complaint concerns certain candidate loans disclosed on reports the Committee filed with the Commission. Since Cardon declared his candidacy on August 12, 2011, the Committee has reported six loans from Cardon, totaling \$4,265,709.60:

DATE	REPORT	AMOUNT
5/26/2011	2011 October Quarterly <sup>2</sup>	\$10,967.75
7/01/2011	2011 October Quarterly	\$34,741.85
8/29/2011	2011 October Quarterly	\$20,000.00
9/30/2011	2011 October Quarterly	\$750,000.00
12/31/2011	2011 Year End	\$450,000.00
3/30/2012	2012 April Quarterly	\$3,000,000.00
	<b>TOTAL</b>	<b>\$4,265,709.60</b>

The Complaint alleges that the first four loans, totaling \$815,709.60, were not made with personal funds, but with the funds of three of his family-owned companies. Compl. at 1-3. The Complaint observes that Cardon made the loans between May and August 2011, the same period during which those three companies — Boa Sorte, Rio Claro, and The Cardon Family, LLC — executed real estate transactions that resulted in the companies obtaining ownership interests in

<sup>1</sup> Rio Claro incorporated in Arizona on June 28, 2004. The Cardon Family, LLC, and Boa Sorte were established as Arizona domestic limited liability companies on February 5, 2002, and December 28, 1995, respectively. See STARPAS Business Entity Search, ARIZ. CORP. COMM., <http://www.azcc.gov/> (last visited June 25, 2012).

<sup>2</sup> The Committee's 2011 October Quarterly Report notes that some transactions were not disclosed in earlier reports "because the candidate had not yet made the decision to form a committee. These expenses were paid by the Candidate and are now reflected as loans from the candidate's personal funds." 2011 Oct. Quarterly Rpt. at 5 (Oct. 14, 2011).

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1 Cardon's personal residence. *Id.* at 2. Based on the timing of these activities, the Complainant  
2 infers that the funds used to make the candidate loans were in fact derived in part from funds of  
3 those companies. *Id.*

4 The Complaint also contends that Cardon loaned his Committee funds that he obtained  
5 from an inadequately secured bank loan, thus constituting an unlawful contribution by the  
6 lending institution. Specifically, the Complaint asserts that Boa Sorte and Rio Claro obtained a  
7 \$2.5 million line of credit from Comerica Bank on May 25, 2011, without adequate collateral as  
8 set forth in 11 C.F.R. § 100.82. Compl. at 2-3. The Complaint alleges that the loan was secured  
9 only with Cardon's residence, valued in 2011 at \$710,800, or "less than one third the amount of  
10 the maximum loan disbursements." *Id.* at 2. Therefore, the Complaint argues that Cardon made  
11 loans to his campaign using corporate funds derived from the line of credit Comerica Bank  
12 issued to Boa Sorte and Rio Claro. *Id.*

13 The Complaint provides a timeline of transactions involving Cardon's personal  
14 residence, copies of the deed reflecting the line of credit, a property assessment, and a Financial  
15 Disclosure Statement that Cardon filed with the Senate on December 14, 2011. Compl., Attach.  
16 A-C. The timeline indicates that Cardon's residence was transferred to Boa Sorte, Rio Claro,  
17 and the Cardon Family, LLC, on November 5, 2010, and reflects additional transactions relating  
18 to the same property in July and August 2011.<sup>3</sup> Compl., Attach. A. The Financial Disclosure  
19 Statement also discloses substantial income and assets under Cardon's control, including salary  
20 exceeding \$177,000 and "Unearned Income" exceeding \$3 million from distributions from  
21 personal trust accounts, among numerous other personal assets. Compl., Attach. C.

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<sup>3</sup> Public property records indicate that Cardon's personal residence was first sold to Boa Sorte and Rio Claro on April 13, 2010, not in November 2010, the date identified in the timeline attached to the Complaint.

1           The Committee indicates that Cardon “indeed loaned personal funds to his campaign”  
2   and that the Comerica Bank line of credit was a separate, unrelated business transaction, which  
3   “Boa Sorte and Rio Claro sought . . . strictly for business purposes.” Comerica Bank’s  
4   response denies that the line of credit was insufficiently collateralized and provides supporting  
5   documentation to demonstrate that it “was in full conformance with the Act.” *See Bank Resp.*  
6   (Feb. 13, 2012); *Bank Supp. Resp.* (Mar. 9, 2012).

7           In a sworn affidavit received by the Commission, Cardon states that he “contributed or  
8   loaned to [his] authorized campaign committee ‘personal funds,’ as that term is used in 11 C.F.R.  
9   § 100.33,” that the companies he controls “did not disburse to [him] any proceeds” from the  
10   Comerica Bank line of credit, and that those companies have not “paid any funds to [him] in  
11   2011 or 2012.” It appears that the funds the Committee borrowed from Cardon “were disbursed  
12   from Mr. Cardon’s personal bank account at Johnson Bank, which holds Mr. Cardon’s earned  
13   compensation, investment proceeds, and income from trusts established before the 2012 election  
14   cycle,” and that none of the three companies at issue “disbursed any monies to Mr. Cardon for  
15   any purpose during 2011 or 2012.” This information is consistent with a sworn affidavit  
16   provided by Carla Frick, the controller of Boa Sorte and Rio Claro, which states that “Boa Sorte  
17   and Rio Claro have not paid any funds to Wilford R. Cardon in 2011 or 2012.”

18           Concerning the bank loan, available information indicates that Boa Sorte and Rio Claro  
19   began loan discussions with a number of banks in 2009, before Senator Jon Kyl announced his  
20   plans not to seek reelection to the Senate seat that Cardon sought.<sup>4</sup> According to Frick, the  
21   negotiations for a line a credit with Comerica Bank took place between October 2009 and

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<sup>4</sup>       *See Jon Kyl Will Not Seek Reelection in 2012*, SENATOR JON KYL’S WEBSITE, (Feb. 10, 2011),  
<http://www.kyl.senate.gov/record.cfm?id=331050>.

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1 May 2011. Frick attests that, as of March 2012, Boa Sorte and Rio Claro had drawn on the line  
2 of credit only three times: a draw of \$377,377 in July 2011, and two draws totaling \$1.5 million  
3 in December 2011 that were paid back in full on January 12, 2012. Consistent with Frick's  
4 affidavit, the Committee states that Boa Sorte and Rio Claro have used the Comerica Bank line  
5 of credit for business purposes only, to fund a third-party real estate partner in July 2011 and to  
6 fund short-term business expenses in December 2011.

7 Finally, information available to the Commission indicates that the line of credit was  
8 secured by four separate properties, not just one as the Complainant claims. Comerica Bank's  
9 response supports this information. A sworn declaration signed by DJ Culkar, the bank's Senior  
10 Vice President and Assistant General Counsel, attests that the credit arrangement was secured by  
11 four properties Cardon's business entities owned, and provides copies of the appraisals and  
12 deeds of trust for each. Bank Resp., DJ Culkar Aff. ¶ 4, Attach. A-H. Appraisals performed on  
13 each property in May and August 2010 assessed their total value at \$3,685,000. On March 29,  
14 2011, Comerica Bank approved a revolving line of credit for \$2,550,000 secured by those  
15 properties, with a loan-to-value ratio of 70 percent. *Id.* ¶ 4. While the bank did not provide a  
16 copy of the promissory note relating to the line of credit, it submitted a screen capture of the line  
17 of credit account showing disbursements and repayments as of January 31, 2012. Bank Supp.  
18 Resp., Attach. That document reflects a 4.25 percent interest rate and four withdrawals:  
19 \$12,750 on May 25, 2011, repaid July 11, 2011; \$377,337 on July 12, 2011; \$1,000,000, on  
20 December 28, 2011; and \$500,000 on December 29, 2011. The screen print reflects that the  
21 December 2011 advances were repaid on January 12, 2012, with a current balance of \$377,337.

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1     **III.     LEGAL ANALYSIS**

2             The Act permits candidates to make unlimited expenditures from personal funds in  
3     connection with their campaigns. 11 C.F.R. § 110.10; *see also Buckley v. Valeo*, 424 U.S. 1, 54  
4     (1976) (holding restrictions on candidates' expenditures from personal funds unconstitutional).  
5     "Personal funds" include assets that, at the time the individual became a candidate, "the  
6     candidate had legal right of access to or control over, and with respect to which the candidate  
7     had (1) Legal and rightful title; or (2) An equitable interest." 11 C.F.R. § 100.33(a). "Personal  
8     funds" specifically include "Income from trusts established before the beginning of the election  
9     cycle." *Id.* § 100.33(b).

10            The Act prohibits national banks and corporations from making contributions in  
11     connection with any federal election and prohibits candidates from knowingly accepting or  
12     receiving such contributions. 2 U.S.C. § 441b(a). In determining whether a payment constitutes  
13     a corporate contribution in the context of candidate loans or expenditures, the Commission  
14     considers whether the funds the candidate used were "personal funds" under 11 C.F.R.  
15     § 100.33(a) as well as the process by which a corporation distributed the funds to a shareholder

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1 candidate that ultimately were used to benefit the candidate's political committee.<sup>5</sup>

2 Here, there is no basis to conclude that the loans referenced in the Complaint were made  
3 using funds from an improper source. Without question, Rio Claro, a corporation, was  
4 prohibited from making a contribution in connection with an election, and Cardon and his  
5 Committee were prohibited from accepting any such contribution. *See* 2 U.S.C. § 441b. Cardon  
6 denies, however, that either Rio Claro, Boa Sorte, or The Cardon Family, LLC, made any  
7 payments to him in 2011 or 2012. And the controller for Boa Sorte and Rio Claro also states that  
8 neither company paid Cardon in 2011 or 2012. Further, according to the Committee, the funds it  
9 received from Cardon came from his personal bank account, "which holds Mr. Cardon's earned  
10 compensation, investment proceeds, and income from trusts established before the 2012 election  
11 cycle." And Cardon's Financial Disclosure Statement reflects that he possessed sufficient  
12 income and assets to make those loans using exclusively personal funds.

13 Finally, the Complaint alleges that the bank line of credit was the source of the loan  
14 funds and that there was inadequate security for that line of credit. The first allegation is  
15 premised on the claim that the loans to the Committee were not made with personal funds, a  
16 proposition the  
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<sup>5</sup> *See, e.g.*, MUR 6102 (Oliver for Congress) (Commission dismissed matter based on candidate's sworn statement that the distribution was proper); MUR 5655 (Rick Renzi) (Commission took no further action after investigation revealed the distributions had been properly made: they were loan repayments and thus personal funds); MURs 5283/5285 (Forrester) (Commission found no reason to believe that the candidate had made loans to his committee with corporate funds based on detailed information from the candidate regarding how he paid personal income tax on his subchapter S corporation's earnings and how the board of directors authorized certain distributions to him and other shareholders); MUR 3191 (Friends of Bill Zeff) (Commission found reason to believe that the candidate used corporate funds to make loans to his committee where the candidate's draw on equity of a subchapter S corporation in which he was a shareholder had the effect of a loan); MUR 3119 (Chandler for Congress) (Commission found reason to believe that money used to make loans to candidate's campaign was corporate where the candidate contended that she borrowed money from her subchapter S corporation and would have to repay it).

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1 available information refutes.<sup>6</sup> Because the loans to the Committee appear to have been made  
2 with personal funds — and not derived from the line of credit — the allegation regarding  
3 whether there was adequate security for the line of credit is not at issue.<sup>7</sup>

4 Accordingly, for the foregoing reasons, the Commission finds no reason to believe that  
5 Comerica Bank violated 2 U.S.C. § 441b(a).

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<sup>6</sup> The Complaint questions whether the Committee properly reported the collateral used to secure the line of credit. Because the loans to the Committee appear to have been made from Cardon's personal funds and not from the line of credit, the Committee was not required to disclose that collateral to the Commission and accordingly, the failure to disclose is not a violation of 2 U.S.C. § 434(b).

<sup>7</sup> The Bank's Response and the Committee provide information about the sufficiency of collateral. *See Bank Resp., Culkar Aff. ¶ 4.*

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